IN THE

Supreme Court of the United States

October Term, 1948

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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TO THE HONORABLE THE CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA AND THE HONORABLE ASSOCIATE JUSTICES THEREOF:

Your petitioner, George Smith, respectfully submits this petition for a writ of certiorari directed to the Circuit Court of Appeals for the Second Circuit, to review the decision and judgment of the United States Circuit Court of Appeals for the Second Circuit in the above cause, affirming in part and reversing in part as to him a judgment of conviction in the District Court of the United States for the Southern District of New York, wherein the petitioner was convicted under Sec. 301 of the Second War Powers Act, 50 U. S. C. A. Appendix, Sec. 633, of unlawfully extending preference ratings in the purchase of textiles and of illegally diverting the textiles so procured, and, under

18 U. S. C. A. Sec. 88, of having conspired to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, Sec. 901 *et seq.*, by selling finished piece goods at prices in excess of the ceilings established by law.

The judgment of the Circuit Court of Appeals affirming in part and reversing in part the conviction of the petitioner was entered on August 23rd, 1948 (R. 1054).

Opinions Below

The District Court rendered no opinion. A majority opinion and a dissenting opinion, not yet officially reported, were rendered by the United States Circuit Court of Appeals, Second Circuit (R. 1038).

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C., Sec. 347a), and as modified, pursuant to the Act of March 8, 1934 (18 U. S. C., Sec. 688), by Rule XI of the Rules of Practice and Procedure after verdict in criminal cases (292 U. S. 661, 666).

Questions Presented

The petitioner, George Smith, together with the Daisart Sportswear, Inc., of which he was the sole officer, director and stockholder, and one, Albert J. Deeb, were charged with two offenses by two separate informations for misusing priorities established under Sec. 301 of the Second War Powers Act, 50 U. S. C. A. Appendix Sec. 633; and in addition they were indicted, under 18 U. S. C. A. Sec. 88,

for conspiring to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, Sec. 901 *et seq.* The first information was of forty-one counts, and it in substance alleged that the petitioner and the co-defendants had unlawfully and wilfully failed to utilize textiles, received as a result of the application of extension ratings, for a prescribed or permitted use. The second information, of a like number of counts, alleged that the petitioner and the co-defendants had unlawfully and wilfully applied and extended preference ratings for textiles which they were not entitled to apply or extend. Finally, the indictment charged them with conspiring to sell finished piece goods at prices in excess of the minimum established therefor.

The indictment and the two informations were consolidated for trial. All were found guilty on the indictment. On the two informations, however, certain counts were eliminated either by action of the court or upon verdict of not guilty, so that petitioner was found guilty on only thirty-five counts of each. Fines aggregating $710,000 were thereupon imposed on petitioner, and in addition he was sentenced to a total of three years' imprisonment.

On appeal to the United States Circuit Court of Appeals for the Second Circuit, the majority court (the opinion being written by Judge Clark and concurred in by Judge Swan), reversed the conviction of your petitioner upon Counts 1-4, 7, 11, 14, 16, 17, 20, 24, and 30 of each information, and affirmed as to the balance. This in effect reduced the fine by the sum of $240,000. but did not affect his prison sentence.

Learned Hand, Circuit Judge, in a dissenting opinion, agreed with the majority court except as to the conviction of your petitioner upon the indictment which in his opinion he stated ought also to have been reversed.

Petitioner contends that having testified under oath before an official of the Office of Price Administration in

obedience to a subpoena, on April 30, 1946, or nearly a year before the charges aforesaid were made against him, he thereby purchased immunity against prosecution under the Compulsory Testimony Act of February 11, 1893, U. S. C. A., Title 49, Section 46, concerning the transactions, matters and things, to which he testified and which the Government made the basis of the charges set out in the informations and indictment, leading to his conviction. The principal and sole questions therefore are:

1: Did the immunity gained by the petitioner by virtue of the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Sec. 46, apply only to the use of the actual testimony given by the petitioner at the hearing before an official of the Office of Price Administration, or did it extend to all charges, the proof of which was made dependent upon leads given by the petitioner in his testimony before the aforesaid official which resulted in his ultimate conviction.

2: May it be contended that the limited volunteered statement (quoted as a footnote below) given by the peti-

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"Question: So that with respect to Daisart Sportswear Inc, contracting activities on ammunition bag materials, were shipped by the manufacturer without bill?

Answer: It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call for. Their orders came to sometimes dated and never in any set sixe or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and aske them if they had anything immediately on hand as I am overstocked, at which time they told nie they had not and to dispose of it.

Question: This is a voluntary statement. You do not claim immunity with respect to that statement?

Answer: No."

tioner on the hearing before an official of the office of Price Administration, which was found by the Court to operate as a waiver of his immunity, was broad enough to justify the decision of the Majority Court in the affirmance in part of the conviction of the petitioner.

3: May it be contended that the immunity granted to the petitioner under the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Sec. 46, is lost where he, in response to the question put to him by the official of the Office of Price Administration, refused to incriminate himself and instead refuted the accusation. (This question is the one raised by Judge Learned Hand in his dissenting opinion.)

4: Did the holding of the Circuit Court that the offenses with which the petitioner and co-defendants were charged were offenses based on "transactions connected together", and that there was an identify of defendants under all the charges, permit the court below to sanction a dismissal of some of the counts hereinabove mentioned in each of the informations, and at the same time uphold the conspiracy indictment which related to the "transactions connected together" with the charges set out in the two informations, or should the court have dismissed the indictment of conspiracy because the conspiracy flowed and was inseparable from the charges in the information.

Statement

The petitioner, on April 30, 1946, in response to a subpoena, appeared before an official of the Office of Price Administration, accompanied by his counsel. Petitioner, after being duly sworn as a witness, and after stating his

name, address, place of business and his connections with the predecessor to the Daisart Sportswear, Inc., advised the representative of the Office of Price Administration who conducted the investigation that he was claiming his right of immunity under the relevant Statute, and that such claim of amnesty would apply on all questions thereafter put to him on such examination and the answers made by him in response thereto.

On this subject the following colloquy took place:

"Mr. Turtz (Official of O.P.A. conducting the inquiry): At this point, Mr. Smith stated that he thought he had a blanket privilege. Mr. Turtz stated that no privilege having been claimed up to this point no immunity would result with respect to the answers made to the questions propounded.

Mr. Smith: I want to claim privilege as to anything that I say.

Mr. Turtz: Up to this point in the record there has been no claim made by you with respect to any privilege or immunity?

Mr. Smith: Correct.

Mr. Turtz: Your counsel has stated to you that with respect to any question which you feel the answer will tend to incriminate you, you have to make the request for privilege yourself. In other words, at this point, Mr. Smith, you are making a request for privilege with respect to any question that I propound to you, except as to those questions which I have already propounded?

Answer: That correct" (pp. 1011, 1012).

The 5th Amendment to the Constitution of the United States provides:

"Nor shall any person be compelled in any criminal case to be a witness against himself."

By specific provision of the Emergency Price Control Act, 50 U. S. C. A. Appendix 922 (g), it is provided that no person shall be excused from complying with any requirements under this Section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Section 46, shall apply with respect to any individual who specifically claims such privilege. 49 U. S. C. A. 46, so far as pertinent here, reads as follows:

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the commission, whether such subpoena be signed or issued by one or more commissioner, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the preceding chapter on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

A perusal of the testimony given by your petitioner before an official of the Office of Price Administration (Government's Exhibit 147-A, p. 1009), will disclose that the petitioner was plied with various questions and that the answers given by him had a telling effect in the sense that his evidence had been used to work up the case against him; in short, that he had been compelled by that testimony to supply the facts on which the Government a year later predicated the informations and indictment and later proved his guilt.

Petitioner revealed that prior to 1944 he conducted business under the assumed name of Daisart Manufacturing Company; that thereafter Daisart Sportswear, Inc., a New Jersey corporation, succeeded to the business of the Daisart Manufacturing Company; that he was the sole stockholder, officer and director of Daisart Sportswear, Inc.; that Daisart Sportswear, Inc. was engaged in the business of manufacturing, purchasing and selling of textiles and kindred products; that Daisart Sportswear, Inc. was a contractor for the Metals Disintegrating Company which was under contract to manufacture ammunition bags directly for the United States Government; that it was also a contractor for many other concerns, to wit:

Lenn Sportswear, Inc.
Mickey Finn Clothing
Kit Packing Co.
London H. C. Co.
London Vest Co.

He also revealed the names of the concerns to whom he extended said priorities, to wit:

A. Steinman & Co., 4th Ave., New York City,
L. Lazarus & Co., New York City,
Southeastern Cottons,

and testified that Dausart Sportswear, Inc. received invoices from these suppliers in connection with the purchase of goods; that payment for the purchase of material was made by corporate check drawn on its bank, namely, Fidelity Union Trust Company, Newark, New Jersey.

In order to obtain a conviction under the informations it was incumbent upon the Government to establish the following facts:

A. The dealings with the Metal Disintegrating Company.

B. The use of blanket preference rating to obtain the desired commodities.

C. The companies from which the materials had been purchased.

D. The disposal of the surplus stock.

E. The companies to which it had been sold.

In order to obtain a conviction under the indictment it was incumbent upon the Government to establish the following facts:

A. That he was in possession of certain textiles.

B. That he sold textiles.

C. That the sale price was in excess of the permissible maximum price.

An examination of the Government's Exhibits 155-158 inclusive, which were prepared by an accountant emanating from the F.B.I. reveals how the government was able to

build up its case from the clues furnished by your petitioner. These exhibits consist of schedules indicating, among other things, the names of the concerns from which your petitioner had purchased merchandise under priority orders, and the sales made by your petitioner. This is particularly so in reference to exhibit 158, which relates to separate counts of the information and the indictment, and traces the goods from your petitioner's suppliers to his ultimate buyers. The buyers were traced as a result of an examination of the books of the suppliers, to wit, Steinman, Southeastern and Lazarus. Suffice it to say that a study of the exhibits mentioned will disclose the fact that your petitioner's testimony elicited from him by the official from the Office of Price Administration, which among other things revealed that he purchased goods from Steinman, Lazarus and Southeastern, furnished the clues which led the government directly to the purchasers.

The court below predicated the affirmance of the conviction in part on the ground that the limited "volunteered statement" given by the petitioner before the official of the Office of Price Administration appearing earlier in a footnote, operated as a waiver of the immunity granted to him under the Compulsory Testimony Act. A reading of the "volunteered statement" indicates that the corporation, Daisart Sportswear, Inc., of which your petitioner was an official, was asked to purchase material for the Metal Disintegrating Co.; that the Daisart Sportswear, Inc. was without proper priorities; that the priorities were furnished to the Daisart Sportswear, Inc. by the Metal Disintegrating Co. in blanket sums; that they were charged from day to day; that Daisart Sportswear, Inc. purchased material for its needs and that when there was a surplus the Daisart Sportswear, Inc. would notify the Metal Disintegrating Co. of the same, at which time it was told to

dispose of it. As pointed out by Judge Learned Hard in his dissenting opinion "a 'waiver' must extend to all the essentials of the charge from whose prosecution the act gives him immunity." This limited volunteered statement did not furnish the Government with sufficient evidence to establish all of the elements above set forth which it was obliged to prove in establishing its charges under the information and the indictment. Those elements, in a great measure, were furnished to the Government or the leads thereof were furnished to the Government through answers given by your petitioner, either prior or subsequent to the "volunteered statement" when questioned by the official from the Office of Price Administration. And it is to be recalled that at the very outset of the hearing your petitioner claimed immunity as to all answers he may thereafter give.

Judge Learned Hand predicated his dissent as to the conviction of your petitioner upon the indictment and voted for reversal with respect thereto on the ground that since it charged your petitioner and divers other persons with wilfully selling and delivering goods at prices over and in excess of the maximum ceiling price, any questions put to your petitioner by the official of the Office of Price Administration on the hearing had before him, as aforesaid, "on account of any transaction * * * concerning which he may testify * * * in obedience to * * * subpoena", even though answered by your petitioner without admitting his guilt, but rather protesting his innocence, operated to grant him immunity under the Compulsory Testimony Act of February 11, 1893 (U. S. C. A. Title 49, Sec. 46). In this connection Judge Learned Hand stated:

> "The privilege, if it is to exist at all, must include all questions which are relevant to the witness's guilt,

regardless of how he will answer them. Were it otherwise, the privilege itself would be conditional upon the answers, and the witness, in order to assert it, would be obliged to disclose whether he would deny or admit any guilt. It is precisely to protect him from that predicament that the privilege exists; indeed, the result would be to compel him, if he was in fact guilty, either to confess his guilt, or to add perjury to it." (Dissenting Opinion, Judge Learned Hand.)

Specification of Errors

The court below erred:

(1) in holding that the immunity afforded your petitioner by virtue of the Compulsory Testimony Act of February 11, 1893 (U. S. C. A. Title 49, Sec. 46), did not apply to the informations and the indictment as a whole, where the proof in support of which was obtained by leads rather than by direct testimony given by your petitioner in his testimony before the official of the Office of Price Administration.

(2) in its misconception of the import of the testimony of your petitioner, earlier quoted here as a footnote, by construing it to be a "voluntary statement" outside of the general claim made by your petitioner at the outset of the hearing before the official of the Office of Price Administration, that all testimony given by him at the hearing was to be considered under the protective privilege of the immunity statute.

(3) in holding that your petitioner gained no immunity upon the indictment under the Compulsory Testimony Act

of February 11, 1893 (U. S. C. A., Title 49, Sec. 46), where in response to a question put to him by the official of the Office of Price Administration relating to the selling prices at which he disposed of the finished piece goods he refused to incriminate himself and instead suggested his innocence. (We reiterate, this question is the one raised by Judge Learned Hand in his dissenting opinion.)

Reasons Relied on for Allowance of the Writ

The Circuit Court of Appeals erroneously misconceived the purpose of the immunity statute. A brief review of the history of the statutes governing the provisions for immunity to a natural person as co-extensive with the immunity guaranteed under the Fifth Amendment of the United States Constitution is enlightening. Government agencies found themselves obstructed in the prosecution of suits against individuals and corporations because of witnesses claiming their constitutional privilege under the Fifth Amendment. Therefore, in order to aid the Government in obtaining necessary evidence, Congress adopted the Immunity Statute of February 25, 1868 (R. S. #860) which, in brief, provided that no evidence obtained from a witness could be used against him in a criminal proceeding.

In *Counselman* v. *Hitchcock*, 142 U. S. 547, the Supreme Court declared this Immunity Statute unconstitutional because the immunity granted thereby was not co-extensive with the Fifth Amendment. The Court pointed out on page 564 that the Statute would not

> "prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such Court. It could not prevent the obtaining and the use of wit-

nesses and evidence which should be applicable directly to the testimony which he might give under compulsion, and on which he might be convicted, when otherwise, and if he refused to answer, he could not possibly have been convicted."

A new statute was then passed by Congress, the Act of February 11, 1893, and incorporated in the Emergency Price Control Act of 1942 (Section 202, subdivision g).

This act was declared constitutional in *Brown* v. *Walker*, 161 U. S. 591, holding that the Fifth Amendment does not deprive Congress of the power to compel the giving of testimony or the production of books and records, even though said testimony or books and records might incriminate the witness, *provided* that immunity be accorded the witness and that said immunity was complete and in all respects commensurate with the protection guaranteed by the constitutional limitation. The Court stated that this immunity statute was one of general amnesty and the desired protection of the Constitution was fully accomplished.

This holding was reiterated by the Supreme Court in numerous other cases including *Glickstein* v. *United States*, 222 U. S. 139, wherein the Court stated on page 141:

"It is undoubted that the constitutional guaranty of the Fifth Amendment does not deprive the lawmaking authority of the power to compel the giving of testimony, even though the testimony, when given, might serve to incriminate the one testifying, provided immunity be accorded, the immunity to be complete; that is to say in all respects commensurate with the protection guaranteed by the constitutional limitation."

In support of this oft-repeated proposition, the court cites:

Brown v. *Walker*, 161 U. S. 591;
Burrell v. *Montana*, 194 U. S. 572;
Jack v. *Kansas*, 199 U. S. 372;
Ballmann v. *Fagin*, 200 U. S. 186;
Hale v. *Henkel*, 201 U. S. 43;
Heike v. *United States*, 217 U. S. 423.

In the case at bar it is conceded that the petitioner when appearing before the official of the Office of Price Administration for the purpose of giving testimony pursuant to the directions of the subpoena served upon him, affirmatively claimed immunity.

It is not essential that the government should have received information with respect to all elements necessary to establish the guilt of your petitioner from the information supplied by him to the official of the Office of Price Administration. It is sufficient that the government may have, not that it should have. This had been the law since at least the time of Chief Justice John Marshall, who stated in the famous Aaron Burr trial (1 Burr's Trial, p. 244):

> "Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible, but a probable case, that a witness by disclosing a single fact may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that re-

mains concealed within his own bosom he is safe, but draw it from thence and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. What testimony may be possessed, or is obtainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws."

The majority court, speaking of the informations, in effect stated that it would have applied the above rule as appears from the following language:

"His claim (referring to petitioner) of immunity would therefore be clear except for the circumstance, now to be stated, of his waiving immunity as to part of his testimony * * * ".

(We shall discuss the question of the waiver in another place below.) The majority court however, with respect to the indictment, did not give the full effect to the above rule. They proceeded on the theory that although your petitioner testified with respect to the prices at which he sold the finished piece goods, and although price is an essential gravamen of the indictment, since, however, petitioner did not testify that he sold the finished goods at a price in excess of the maximum price established by law therefor, he gained no immunity. This is wholly overlooking the testimony given by your petitioner to the official of the Office of Price Administration both before and after the

alleged volunteered statement. From such testimony the Government was able to obtain leads which led it directly to the essential proof on the question of over-ceiling price at which the finished goods were sold. For example, your petitioner testified from whom he had purchased the textiles, and the Government, by means of this testimony, was able to trace the purchasers and from them ascertain the price paid to the Daisart Sportswear, Inc. for the finished goods.

This is apparent from an examination of Exhibits 155-158 inclusive, which were prepared by an accountant for the F.B.I. It will be recalled that your petitioner, in his testimony before the official of the Office of Price Administration, identified the firms of Steinman, Lazarus and Southeastern as firms from which he purchased priority material, and that such disclosures were the clues which led the Government directly to the purchasers. This becomes clear from the Government attorney's summation (ff. 2811-2812) in which, referring to Exhibit 158, he states:

> "Let us pause at this point to evaluate that bit of information. In order to trace this material, it was necessary not only to establish the source of the material to the various suppliers, but it was also necessary to establish to whom they had been sold or delivered eventually."

The Government using the information supplied by your petitioner relating to the source of supply, located the purchasers and ascertained that a price in excess of the ceiling price had been paid.

We now consider the so-called volunteered statement regarded by the court below as a partial waiver of your petitioner's immunity. In the "voluntary statement" (ap-

pearing in the footnote earlier), the official of the Office of Price Administration, after asking a question and obtaining an answer, followed up with another so-called question, to which the answer was "No". This so-called latter question had two sentences—(1) "This is a voluntary statement." If the answer "No" is to be applied to this first sentence, obviously it means that it is not a voluntary statement. The next sentence in the so-called latter question is (2) "You do not claim immunity with respect to that statement". If the "No" answer is to be applied to this latter sentence, then a waiver of immunity might be spelled out. As we understand the rule, however, a waiver is not to be inferred. It is only to be found to exist when it is plain, concise, clear and unequivocal.

Additionally, it should be stated that the question of waiver was raised for the first time in the brief of the Government before the Circuit Court. The record before the trial court contains no claim by the Government that there was a waiver in whole or in part by your petitioner with respect to his testimony before the official of the Office of Price Administration. In point of fact the trial court excluded the entire testimony given by your petitioner before the official of the Office of Price Administration. In referring to such testimony the trial court stated:

> "That was the statement of the examiner and I will resolve that question in favor of the defendant, George Smith, and I will exclude the entire statement as to the defendant, George Smith, including that one answer." (Referring to the testimony given by your petitioner before the Official of the Office of Price Administration, f. 2563.)

Thus, the trial court in fact ruled "that there was no voluntary statement" by your petitioner. The Govern-

ment's attorney raised no objection to this ruling, nor did he contend that your petitioner had waived the privilege claimed by him at the outset of the examination. Accordingly, we find no basis for the statement by the Majority Circuit Court that "a more reasonable approach is to apply the waiver to the extent and in accordance with the intent of the witness, as the examiner accepted it at the time".

In view of the fact that the Government's attorney did not raise the issue that the statement made by your petitioner was voluntary in whole or in part, his trial counsel was placed in the position where it was unnecessary, in fact impossible, to raise any issue as to the meaning of the question and answer which is now characterized as a "voluntary statement". Nor could your petitioner's counsel call your petitioner to testify as to his intent with respect to the claiming of or waiving of immunity. The trial court had already decided that issue in favor of your petitioner, which, we repeat, was without objection or argument by the Government's attorney.

This question, therefore, should not have been considered *de novo* by the Circuit Court.

Finally, we turn to the point raised by Judge Learned Hand in his dissenting opinion on petitioner's behalf as respects the indictment. It will be recalled that the majority opinion took the position that although the over-ceiling price was an essential gravamen in the proof of the indictment, that since your petitioner refused to incriminate himself, and instead refuted the accusation, petitioner could gain no immunity under the statute. Judge Learned Hand, in disagreement with his colleagues, and in voting for a reversal as to the indictment, indicated that since petitioner had testified as to the sale price of the finished piece goods, he testified on account of a "transaction" which related to the indictment in obedience to a subpoena, and

even though petitioner's answer refused to admit his guilt, protesting rather his innocence, he was nevertheless entitled to the immunity afforded him by the statute. We can do no better than refer this Honorable Court to the opinion written by Judge Learned Hand.

If more need be said, the statute itself is a complete answer in proof that petitioner is entitled to immunity, no matter which way his answer goes.

Implicit in the statute is that those who answer admitting guilt, as well as those who deny guilt, are entitled to immunity. In no other way can there be given effect to the provision of that portion in the statute (Compulsory Testimony Act of February 11, 1893, 49 U. S. C. A., Sec. 46) reading:

> "Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

The net effect of the quoted portion is that immunity is to be granted nevertheless, the punishment to be visited upon the offender, however, is that he is to be punished for perjury in giving false answers.

In passing, we respectfully submit that the question involved here is an important one, which should be settled by this Court.

In the interest of economy, we have obviated the necessity of submitting a separate brief in support of the petition. We have instead preferred to combine the petition with the supporting citations of statutory and case law.

CONCLUSION

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari directed to the United States Circuit Court of Appeals for the Second Circuit, be granted to review the decision and judgment of the Circuit Court of Appeals for the Second Circuit.

Dated: September 16, 1948.

Respectfully submitted,

GEORGE SMITH,
Petitioner

By JULIAN C. TEPPER,
Attorney for Petitioner.

WALTER R. HART
and
LOUIS TIMBERG
With him on the Petition.

Certificate of Counsel

I hereby certify that in my judgment the foregoing petition is well founded and that it is not interposed for delay.

JULIAN C. TEPPER,
Attorney for Petitioner,
and a member of the Bar
of this Court.